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DATE: 1-15-04  
BY: Kim

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Jan 14, 2004  
YOUNG D.J.  
MOTION ALLOWED

U.S. DISTRICT COURT  
DISTRICT OF MASS.

FREDERIC BERTHOFF,  
Petitioner,

*William D. Young*  
U.S. District Judge

04 10170 WGY

v.

NO.

[Former No. CIV.A.97-10883-WGY;

Indictment No. 93-CR-30008-WGY]

UNITED STATES OF AMERICA.

MAGISTRATE JUDGE *Dein*

**FREDERIC BERTHOFF'S MOTION TO PROCEED IN FORMA PAUPERIS**

Petitioner Frederic Berthoff ("Berthoff"), in the above-entitled matter, through Counsel and pursuant to 28 U.S.C. §1915, moves this Court to permit him to proceed in Forma Pauperis in his **Frederic Berthoff's Omnibus Petition for Relief and Request for Hearing**. As his reason therefor, he assigns as follows:

On March 18, 1994, Berthoff was convicted by a Jury, before this Court, on several counts of Indictment No. 93-CR-30008-WGY. On June 14, 1994, Berthoff was sentenced to a twenty-one year committed term on Counts 1 and 2, with lesser, concurrent committed terms, on the remaining convicted Counts.

Berthoff filed a Notice of Appeal from the Judgment on June 22, 1994. On November 29, 1995, in an unpublished Opinion, the First Circuit affirmed Berthoff's conviction in all respects.

On April 23, 1997, Berthoff filed with this Court his Petition for a Writ of Habeas Corpus, Civil Action No. 97-CV-10883-WGY. On December 18, 1998, this Court denied Berthoff's Petition but granted Berthoff a Certificate of Appealability on the §2255 Petition.

The matter went to the First Circuit. The Court of Appeals did not address the underlying

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merits of the case, but rather remanded -- on the question of the issuance of the Certificate of Appealability -- for further clarification from this Court.

On April 9, 2001, This Court issued an Opinion in the form of a Report, Berthoff v. United States, 140 F.Supp.2d 50 (D.Mass. 2001).

The Court again denied Berthoff's Petition, but once again issued a Certificate of Appealability, inviting the Court of Appeals to address the issues invoked in this Court's Report.

After hearing in September, 2002, the First Circuit found on October 21, 2002 that the Certificate of Appealability was improperly granted.

Berthoff has raised certain issues in his present Petition, in good faith, and with the belief that they are worthy of presentation. They are:

1. That the Court's reasons for sentencing him at the time of disposition neither supported nor justified the sentence within the sentencing range established by the United States Sentencing Guidelines;
2. That Berthoff's sentence was unconstitutionally disparate within the Guidelines range when compared to the sentences of his co-defendants and others similarly situated; and
3. That his sentence was unconstitutionally disparate from the sentences of those of his co-defendants in any event.

Berthoff does not have, nor will he have, the means to pay an Attorney to prosecute his Petition. Present Counsel has advised him and prepared his Petition entirely on a pro bono basis. Nor does Berthoff possess the personal means to pay for any docketing or filing fees which may be associated with the submission of his Petition.

Further, Berthoff is not employed and has no present income, and has had no income for

approximately eleven years, except for sporadic and marginal prison labor wages. He has no cash, property or other assets; nor are any debts owed to him. He has no expenses to speak of and to the extent that he does, his parents try to help him with such.

Further, Berthoff has not paid any attorney for services in connection with the preparation of this Petition, nor has he made any arrangement or promise for any future payment of attorney's fees. Also, he has not paid, nor has he made any arrangement or promises for future payment to any non-lawyer for services in connection with this Petition.

The Court is referred to Berthoff's Affidavit for his sworn statement as to the facts contained herein.

Therefore, the Court is asked to grant Berthoff leave to proceed in this matter in Forma Pauperis.

Respectfully submitted,

FREDERIC BERTHOFF,  
By Counsel:

A handwritten signature in black ink, appearing to read "Martin D. Boudreau", written over a horizontal line.

MARTIN D. BOUDREAU  
487 Adams Street  
Milton, Massachusetts 02186  
(617) 698-2240

DATED: January 15, 2004

**CERTIFICATE OF SERVICE**

I, Martin D. Boudreau, Counsel to Petitioner Frederic Berthoff in the foregoing-captioned matter, certify that I have served copies of the within **Frederic Berthoff's Omnibus Petition for Relief and Request for Hearing, Exhibits, and Frederic Berthoff's Motion to Proceed in Forma Pauperis** upon the Government by mailing same, first class postage prepaid, to

Kevin O'Regan, Chief  
United States Attorney's Field Office  
Federal Building & Courthouse, Room 310  
1550 Main Street  
Springfield, Massachusetts 01103,

this 15<sup>th</sup> day of January, 2004:

  
MARTIN D. BOUDREAU